

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

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INFORMATION

Friday - February 7, 1969

To: The President
From: Henry Kissinger *HK*
Subject: Aircraft Hijacking

Secretary Rogers has submitted the attached memorandum describing the steps the State Department is taking to deal with the problem of aircraft hijacking.

We seem to be making progress in obtaining Cuban Government cooperation in two areas:

1. They have indicated their willingness to accept limited numbers of Cubans who wish to return to Cuba from the US.
2. They are willing to permit passengers to return to the US on the hijacked plane if the crew, airlines, and US authorities will accept full responsibility. (The passengers of a hijacked Colombian plane were permitted to return on the same plane yesterday, after the Colombian authorities assumed responsibility for their safety.).

However, it is probably going to be difficult to reach agreement with the Cubans on the one step that might have some deterrent effect, i.e., returning hijackers of commercial aircraft to the country of aircraft registry to face criminal prosecution. The Cubans have said they do not consider it possible to undertake a bilateral agreement "under present circumstances", and Castro recently has implied that Cuban measures to return hijackers may depend on our actions to prevent Cubans from departing Cuba illegally via the Guantanamo Naval Base.

I think you should be aware of one historical aspect of this problem which may prove embarrassing to us. In 1961, when there were several cases of ships and planes seized by Cubans escaping to the United States, we did not respond to a Cuban note proposing a mutual agreement to return the persons responsible for those actions to the country of registry of the ship or plane. In effect, we refused to consider essentially the same proposal we have now made to the Cubans.

Attachment - Secretary Rogers memorandum to the President, February 6.

THE SECRETARY OF STATE
WASHINGTON

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S/S-1260

February 6, 1969

MEMORANDUM FOR THE PRESIDENT

Subject: Hijacking of Aircraft

Hijacking of aircraft to Cuba is an increasingly serious problem. Most of the hijacked aircraft have been U.S. planes, but aircraft from Mexico, Colombia, Venezuela and Peru have also been involved. So far this year, nine U.S. aircraft and three from other countries, all commercial airliners, have been taken to Cuba. This compares with seventeen U.S. and nine non-U.S. aircraft hijacked in 1968. A few of these were non-scheduled and private planes, but most were commercial airliners. There were seven successful hijackings of U.S. aircraft and three of other countries in the period 1961-67. Most of the recent hijackers have been U.S. citizens, rather than Cubans.

None of these incidents has as yet involved us in a serious international problem. Aside from the inconvenience and cost involved in each incident, however, there are two kinds of problems that could arise:

- a) an accident with loss of life; and
- b) an incident in which we are unable to obtain the return of the aircraft or the passengers and crew. (So far, the Cubans have been meticulous about returning relatively promptly hijacked aircraft, passengers and crew. However, they could change their attitude, or, if the habit spreads, we could have a hijacking of a U.S. aircraft to some less cooperative place, such as North Korea.)

Given the growing seriousness of the problem and the increasing public and congressional concern about it, I

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thought it desirable that you be advised of the steps the Department has taken with respect to the international aspects of this problem, both bilaterally and multilaterally:

1. Bilateral

We have made two bilateral approaches to the Cubans through the Swiss:

a. We suggested last July that we use the return leg of the refugee air lift plane to return to Cuba those Cubans that want to go back to Havana, and that the Cuban Government agree to permit them re-entry into Cuba. In November we provided the Cuban Government with a list of names of Cubans in the U.S. who had indicated to us their desire for repatriation. Most of the hijackers are not Cubans, but some are, and a repatriation arrangement might be helpful, at least psychologically.

b. We presented a note to the Cubans through the Swiss in December proposing an arrangement for the return of hijackers of commercial aircraft and expressing our willingness to make this reciprocal. One of the most effective means of deterring further hijackings would clearly be the prosecution of hijackers, and a gap in our efforts to combat the problem has been the fact that Cuba, at present, does not return hijackers to the country of aircraft registry. Nor, to our knowledge, are they tried for hijacking in Cuba.

We have just received through the Swiss a Cuban reply dated February 1 to both approaches. The Cuban note is measured and responsible in tone, indicates that the Cubans are concerned themselves about the problem, and provides some hope for some small practical steps that could ease the problem:

--The Cuban Government stated that it could not approve unrestricted entry for all Cubans who might wish to return from the U.S. because this could result in relatively large

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numbers of returnees and present serious problems re housing and employment. Nor did they wish to permit return of individuals who violated Cuban law in departing the country illegally. They are prepared however, to receive limited numbers and to give consideration to any list of names given them.

--Recognizing concern expressed over the Cuban practice of requiring the hijacked plane to return without the passengers and the latter to be flown back separately, the Cuban Government stated its willingness to permit passengers to return to the U.S. on the hijacked plane provided the crew, the airlines and U.S. authorities consider this feasible and safe, and take the responsibility.

--The Cuban note stated that the Cuban Government does not consider it possible "under present circumstances" to undertake bilateral commitments to return hijackers. However, if hijackings are repeated at their present rate, the Government of Cuba would "consider the adoption, on its own account, of such measures as it might deem appropriate to settle the matter adequately and fairly." We take this to mean the possibility of publicized prosecution of hijackers in Cuba or unilaterally returning or expelling them.

We plan an immediate response to the Cuban reply to pin down arrangements on the first two points--which will settle some practical problems--and to express our hope that the Cubans will give continued consideration to either the return or prosecution of hijackers as a means of deterring further incidents.

At the time the Swiss Ambassador received the Cuban note he also talked to Castro himself. In that conversation, as reported by the Ambassador, Castro expressed his concern over the hijackings, "especially since most of the hijackers are not completely normal people." He also expressed his concern that many of the Cubans who

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hijacked planes were persons who fled the country illegally, especially through Guantanamo.

We had given some thought to a direct approach to Castro through some unofficial intermediary such as James Donovan. However, in view of the Cuban reply just received, indicating reluctance to proceed at the moment with negotiated bilateral understandings we have decided to defer further consideration of this tactic for the time being. We will weigh its desirability again in the future if the problem's intensity is sustained or if more propitious signs for it are received.

2. Third Party.

a. We asked the Director General of IATA, the International Organization of Airlines, to talk to the Cubans about the general problem. He did so in Havana in January. He was given no encouragement, and nothing significant developed from the conversation. But the Cuban authorities did state they considered this a "first talk" and would be prepared to discuss the problem further.

b. We have also asked the President of the International Civil Aviation Organization (ICAO), a U.N. specialized agency, to talk to the Cubans. He has not yet received a response to his request to discuss this matter.

c. We have asked both the Canadians and Mexicans to discuss the general problem with the Cubans--not on our behalf but in terms of it being an international problem. The Canadian Ambassador has a request pending with the Cuban Foreign Minister for this purpose. The Mexicans do not believe the moment propitious for them to make a general approach, but they have requested extradition of hijackers of Mexican planes--unsuccessfully so far.

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3. Multilateral.

We have two major multilateral efforts in progress:

a. The first involves the "Tokyo Convention," which deals principally with crimes aboard aircraft and only secondarily with hijacking. It would require the country where a hijacked plane lands to return the airplane to the country of its registry and to permit the passengers and crew to continue their journey. That convention is not in effect since it requires 12 ratifications before it becomes effective, and only 8 have so far ratified. President Johnson sent this convention to the Senate for its advice and consent in September 1968. I would hope that the U.S. would ratify it soon, and that thereafter it would quickly become effective. While I doubt that Cuba will ratify soon, this is an important convention in that it establishes an international code of conduct that would be helpful if we ever have an incident in which either the airplane, the passengers, or the crew is detained.

b. The U.S. has proposed a protocol to the Tokyo Convention that would require that a country return the hijacker to the country where the hijacked aircraft is registered for trial. There will be a meeting on this protocol in Montreal on February 10, under the auspices of ICAO. There are two important aspects to this protocol:

- (1) It is limited to incidents involving the hijacking of a commercial aircraft carrying passengers for hire. We would not want to get involved with individuals who steal a raft or a small aircraft to escape political persecution or the like.
- (2) Our proposal provides that the traditional right of asylum would not apply to hijackers covered by the protocol. Our feeling was that the risks to safety are so great that

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they outweigh this traditional consideration.

We are aware that conceivably we might have to return a hijacker who does plead that he is escaping political persecution. Nevertheless, we felt that without this exception to the asylum rule, the protocol would not be effective.

I am advised that there appear to be very limited possibilities of preventing hijacking at the source, e.g. by screening devices or procedures before the aircraft is boarded or by over-powering hijackers in flight. The Federal Aviation Agency and the Department of Transportation, with whom we maintain constant communication and coordination regarding the overall problem of hijacking, are, I understand, informing you further with respect to these areas.

As you can see, dealing with this matter on the domestic and international fronts has proved to be both difficult and frustrating. We will continue, however, to deal with the problem as a matter of urgency.



William P. Rogers

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DECLASSIFIED

PA/HO, Department of State

E.O. 12958, as amended

Attention June 22, 2004

on this study together.

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S/S-1260

February 6, 1969

Copies To:

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ARA
Treasury
RF

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